



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 2017

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Suzanne M. Graves, Attorney
1317 W. Foothill Blvd. Ste. 245
Upland, California 91786

CEO
Best Choice Products
5642 E. Ontario Mills Parkway
Ontario, California 91764

Re: Clean Air Act (CAA) Section 114(a) Information Request

Dear Ms. Graves:

The United States Environmental Protection Agency (EPA) hereby requires Best Choice Products (you) to provide information relating to the production, import, and/or sale of portable fuel containers. This information is needed to determine whether Best Choice is in compliance with provisions of the Clean Air Act (CAA or the Act) and the portable fuel containers regulations found at 40 C.F.R. Part 59, Subpart F.

Pursuant to section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of the EPA is authorized to require any person who, among other things, is subject to any requirement of the CAA or who the Administrator believes may have information necessary for the purposes set forth in section 114(a)(1), 42 U.S.C. 7414(a)(1), to provide information as he or she may reasonably require for the purposes of determining whether such person is in violation of any provision of the CAA. This authority has been redelegated to the undersigned official.

You are hereby required, pursuant to section 114(a) of the CAA, to provide responses to the requests herein within 60 calendar days from your receipt of this Information Request. Instructions and definitions are provided in Enclosure 1 and the information being requested is contained within Enclosure 2. Please attach a properly executed Statement of Certification (*see* Enclosure 3) to your response to this request. The statement should be signed and dated.

Failure to provide the required information is a violation of the Act and may result in one or more of the following actions: 1) issuance of an administrative penalty order pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d); 2) issuance of an order requiring compliance with this request; 3) the initiation of a civil action pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b); and/or 4) any other action authorized under the Act. In addition, knowingly providing false information in response to this information request may be actionable under section 113(c) of the Act, 42 U.S.C. § 7413(c), and 18 U.S.C. §§ 1001 and 1341. The information you provide may be used by the EPA in administrative, civil, and criminal proceedings.

Under section 114(c) of the Act, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, Subpart B, including 40 C.F.R. § 2.301, you are entitled to claim as confidential any information you provide to the EPA which involves trade secrets and is regarded as confidential business information by you. For such information, you may request that the EPA treat such information as confidential. Any such claim for confidentiality must conform to the requirements of 40 C.F.R. § 2.203(b). Note that emission data cannot be claimed as confidential under section 114(c). For detailed instructions, please see Enclosure 4 to this letter. Information you supply will be treated as confidential business information to the degree determined to be appropriate according to the regulations. If you fail to furnish a business confidentiality claim with your response to this information request, the EPA will construe your failure as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please submit the requested information to:

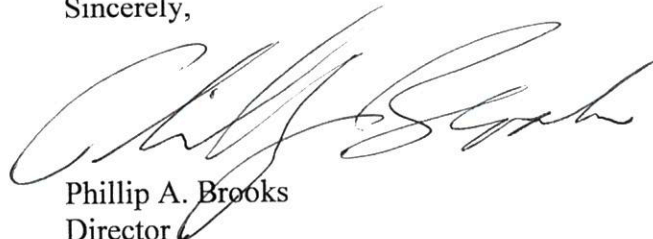
Shaun Burke
Air Enforcement Division, Mail Code: 2242A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If sending electronic media please use a delivery service such as FedEx or UPS and use the following address:

Shaun Burke
U.S. Environmental Protection Agency
William Jefferson Clinton Building South - Room 2119B
1200 Pennsylvania Avenue, NW
Washington, DC 20004

If you have any questions regarding this Information Request, please contact Shaun Burke, at 202-564-1039.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks". The signature is fluid and cursive, with the first name "Phillip" being more prominent than the last name "Brooks".

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

Enclosures: 1) Instructions and Definitions
2) Information Requested
3) Statement of Certification
4) Confidential Business Information

cc: Julia Giuliano, OAQPS, Ann Arbor, MI

ENCLOSURE 1

Each of the following instructions applies to each and every request contained in Enclosure 2.

A. Instructions

1. Please provide a separate narrative response to each request and subpart of each numbered paragraph in Enclosure 2 of this Information Request.
2. Where appropriate, please submit electronic or list information in Microsoft Excel, or similar format. You may also choose to either submit documents in .pdf format or submit documents as hard copy documents. Electronic submissions, in Excel where possible, are preferred.
3. If you have no responsive information or documents pertaining to a particular request, submit an affirmative statement and explanation.
4. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the request to which it corresponds. If a document is responsive to more than one request, this must be so indicated and only one copy of the document needs to be provided.
5. Provide all documents supporting your responses to this Information Request, such as sales records, correspondence, permits, etc.
6. For each document provided in response to this Information Request, provide an accurate and legible copy submitted electronically, clearly label to which request(s) the data is responsive.
7. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner and the basis for the number provided (e.g., estimated, measured or engineering judgment).
8. Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such documents or information.

B. Definitions

The following definitions apply to each of the requests set forth hereafter and are incorporated therein.

1. The term “**information**” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and

intraoffice communications, electronic mail (email), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and work sheets. The term “information” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “information” also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. Information bearing any notation not part of the original text is considered to be separate information. A draft or non-identical copy is separate information within the meaning of this term.

2. The terms **“you”** and/or **“your”** shall mean Best Choice Products and its affiliated organizations, and all of your agents, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, and contractors. These terms shall also mean any others who are not listed above and are in possession, custody, or control (actual or constructive) of information relevant to this Information Request or information that is otherwise available to you, or who may have obtained information for or on behalf of Best Choice Products
3. The term **“entity”** means any natural person, corporation, partnership, Limited Liability Company, sole proprietorship, joint venture, or any formal or informal group, organization or association.
4. The term **“person”** includes an individual, corporation, partnership, or association (see Section 302(e) of the CAA, 42 U.S.C. § 7602(e)).
5. The term **“affiliated organization”** means any organization or entity associated with you as an agent, parent organization, predecessor corporation, subsidiary organization, or any organization or entity acting in lieu of you.
6. The term **“portable fuel containers”** or **“PFC”** means any reusable container designed, marketed, or otherwise intended for use by consumers for receiving, transporting, storing, and dispensing gasoline, diesel fuel, or kerosene.

All terms not defined in this enclosure have their ordinary meaning, unless such terms are defined in the Clean Air Act and/or its implementing regulations, and in which case the statutory and/or regulatory definitions apply. Words in the singular shall be construed in the plural, and

vice versa, where appropriate in the context of a particular request. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this information request any information which might otherwise be construed to be outside its scope.

ENCLOSURE 2

Information Request

You are hereby required, in accordance with Section 114(a) of the CAA, 42 U.S.C. § 7414(a), to provide the following information:

Manufacture, Importation, and Purchase of Portable Fuel Containers

1. Provide a list of all PFCs imported by you between January 1, 2012, and the present. Identify the entity from which the PFC was purchased.
2. Provide a list of all PFCs sold by you between January 1, 2012, and the present.
3. Provide a list of all PFC nozzles sold by you between January 1, 2012, and the present.
4. For each PFC and nozzle identified in Requests 1-3, identify:
 - a. The EPA family number and certificate of conformity of the product listed on the EPA certificate at 40 C.F.R. § 59.602;
 - b. The purchase price of the PFC listed by container and nozzle;
 - c. The wholesale purchase price of the PFC and nozzle purchased by you;
 - d. If a PFC or nozzle was sold by a third-party vendor on your website, provide names of the seller and purchaser as well as any invoice, and all other commercial information related to the sale; and
 - e. The quantity that was sold organized by purchaser;
5. Provide a summary list of all uncertified PFCs sold by Best Choice Products, by calendar year, for the years 2012 through 2016. This list must include the following information:
 - a. The type or category of PFC
 - b. The amount sold of each type or category, by year
 - c. The amount of profit you made per year on sales of each category or type of PFC
6. For PFCs listed at the following web addresses, provide all the information in requests 1 through 4 above, including, but not limited to, a copy of all valid certificates of conformity as identified in 40 C.F.R. § 59.602:
 - a. <https://bestchoiceproducts.com/products/5-gal-20l-jerry-can-gasoline-gas-fuel-can-emergency-backup-gas-caddy-tank>
 - b. <https://www.walmart.com/ip/Best-Choice-Products-SKY1705-Jerry-Can-Gas-Caddy-Tank-5-Gal-20L-Gasoline-Gas-Fuel-Can-Emergency-Backup/122628489>
 - c. <https://www.amazon.com/Best-Choice-Products-SKY1705-Emergency/dp/B00JY5SQ3A>
 - d. <http://www.sears.com/bestchoiceproducts-5-gal-20l-jerry-can-gasoline-gas/p-SPM7989363008>
7. For PFCs that are identified in response to all of the above requests, provide a copy of

all labels for each type of container (not every label) as identified in 40 C.F.R. § 59.615.

8. Identify the person(s) (including name, title, and a description of job duties) that provided information that was used or considered in responding to a request, as well as each person (including name, title, and a description of job duties) who was consulted in the preparation of the response. Provide contact information for any follow-up questions regarding your response to this request.

ENCLOSURE 3

Statement of Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations pursuant to section 113(c)(2) of the Clean Air Act, and 18 U.S.C. §§ 1001 and 1341.

(Signature)

(Printed Name)

(Title)

(Date)

ENCLOSURE 4

Confidential Business Information (CBI) **Assertion and Substantiation Requirements**

A. Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in response to this Information Request, as provided in 40 C.F.R. § 2.203(b). You may assert a business confidentiality claim covering such information by placing (or attaching) a cover sheet, stamped, or typed legend (or other suitable form of notice) employing language such as “trade secret” or “proprietary” or “company confidential” on (to) the information for which you desire to assert a confidentiality claim, at the time it is submitted to the EPA. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by the EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by such a claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 114(c) of the Clean Air Act (the Act) and 40 C.F.R. Part 2. The EPA will construe the failure to furnish a confidentiality claim with your response to the Information Request as a waiver of that claim, and the information may be made available to the public without further notice to you.

B. Substantiation Requirements

All confidentiality claims are subject to EPA verification in accordance with 40 C.F.R. Part 2, Subpart B. The criteria for determining whether material claimed as confidential is entitled to such treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301, which provide, in part, that you must satisfactorily show: that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; that the information is not and has not been reasonably obtainable by legitimate means without your consent; and the disclosure of the information is likely to cause substantial harm to your business’s competitive edge.

You must be specific by page, paragraph, and sentence when identifying the information subject to your claim. Conclusory allegations will be given little or no weight in the determination. Any information not specifically identified as subject to a confidentiality claim may be disclosed without further notice to you. For each item or class of information that you identify as CBI, you must answer the following questions, giving as much detail as possible, in accordance with 40 C.F.R. 2.204(e):

1. What specific portions of the information are alleged to be entitled to confidential treatment? For what period of time do you request that the information be maintained as confidential, until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.
8. Any other issue you deem relevant.

Please note that “emission data” provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B.

“Emission data” means, with reference to any source of emission of any substance into the air:

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.301(a)(2).